

**REMARKS**

Claims 1-7 and 9-11 are pending in the present application. In the above amendments, claims 1 and 9 have been amended for clarity.

In the Office Action mailed May 20, 2003, the Examiner objected to claims 9 and 10 because claim 9 recites "determining a reference rate power level and one additional rate transmit power level;" however, the Examiner states that such a limitation is not used in subsequent limitations recited in the claim. Applicants, however, respectfully disagree with the Examiner's objection to the claim. Applicants submit that the aforementioned limitations do not necessarily have to be used in subsequent limitations of the claim for clarity.

The Examiner rejected claims 9-11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 14, 19, and 22-24 of U.S. Patent No. 6,137,840 in view of English et al. (U.S. Patent No. 5,528,593). The Examiner alleges that U.S. Patent No. 6,137,840 discloses in claims 1, 14, 19, and 22-24 every feature of the claimed invention, but does not explicitly teach a variable data source means for providing the variable rate data frames and the frame rate signal. The Examiner then alleges that the patent to English discloses a variable data source means for providing the variable rate data frames and the frame rate signal. The Examiner then concludes that it would have been obvious to incorporate the teaching of English into U.S. Patent 6,137,840 to generate the desired amount of data signal to be transmitted to the selected remote station. In response thereto, Applicants will submit a terminal disclaimer to overcome this obviousness-type double patenting rejection set forth by the Examiner once the application is in condition for allowance.

The Examiner rejected claims 1-7 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention. Specifically, the Examiner alleges that the disclosure teaches that the base station examines the pattern of incoming power control messages to determine characteristics of the fade and use the estimated fade to control changes that need to be made. Hence, the Examiner contends that one of ordinary skill in the art would not be able to make and/or use the invention as claimed. The Examiner further alleges that the specification only teaches that errors in mobile

communication come in two types; those that are random and those that are a result of a change in the propagation path. Hence, the Examiner contends that the base station determines whether the errors reported were a random nature or a genuine fading condition. Applicants have amended claim 1 so that it is directed towards determining whether the errors indicate a random fade condition or a genuine fade condition. Applicants respectfully submit that the specification provides sufficient information to allow one of ordinary skill in the art to implement the features of the instant claims as now amended.

The Examiner rejected claims 9-11 under 35 U.S.C. §103(a) as being unpatentable over Henriksson in view of English et al. (US 5,528,593). In the rejection, the Examiner alleges that Henriksson discloses a method and apparatus having the capability of controlling transmission power of variable rate frames of data. The Examiner states that Henriksson fails to teach that the control processor determines a rate transmit power level and at least one additional transmit power level in accordance with the reference rate transmit power. The Examiner then relies on English for disclosing a method for controlling power in a variable rate communication system generating a reference rate transmit power level for a full rate transmission and at least one additional reference power level in accordance with the reference rate transmit power level. The Examiner then concludes that it would have been obvious to incorporate the teaching of English into Henriksson as it would provide the system with the capability to transmit the signal information at a different power level. Applicants, however, respectfully traverse this rejection.

The Examiner states that English teaches a reference power level and a plurality of additional power levels  $\frac{1}{2}$ ,  $\frac{1}{4}$ , and  $\frac{1}{8}$  related to the first power level. Applicants do not dispute the Examiner's description of English in this manner. However, Applicants respectfully submit that the term "reference rate power level" has a specific meaning as used in the specification of the instant invention (i.e., namely a basis upon which other power levels are decided in a "loop"). Applicants respectfully submit that English teaches one reference rate power level with three dependent rates. The claims of the instant invention, however, require two reference rate power levels, each with a dependent rate, and each with its own loop for setting the power level of the dependent rate. Because this is not taught by English nor Henriksson, Applicants respectfully submit that the claims of the present invention are patentable thereover.



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REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Dated:

10/20/03

Respectfully submitted,

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